

JUL 15 2010

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JOHN F. CORCORAN, CLERK
BY: 
DEPUTY CLERK

THOMAS SCOTT VANDEGRIFT
Plaintiff,

v.

CITY OF ROANOKE SHERIFF'S
OFFICE,

OCTAVIA L. JOHNSON, individually
and in her official capacity as Roanoke
City Sheriff;

BRANDON YOUNG, individually
and in his official capacity as Roanoke
City Sheriff's Office Deputy;

KENNETH FERRELL, individually
and in his official capacity as Roanoke
City Sheriff's Office Deputy;

JEWELL PAYNE, individually
and in her official capacity as Roanoke
City Sheriff's Office Deputy;

Defendants.

Civil Action No. 7:10-cv-00054

Order

By: Hon. James C. Turk
Senior United States District Judge

This action was brought by the Plaintiff under 42 U.S.C. § 1983, claiming a deprivation of his civil rights, and under Virginia state law for assault and battery. Both claims arise out of the Plaintiff's arrest and subsequent detention at the Roanoke City Jail, where Plaintiff alleges that he suffered injuries from the Defendants' excessive use of force. The matter came before the Court on Motions to Dismiss (Dkt. No.'s 7 & 8) by three of the Defendants: the City of Roanoke Sheriff's Office, Octavia L. Johnson, and Brandon Young.¹ Plaintiff responded to the

¹ At the time of the Motions to Dismiss, Plaintiff had named John Doe and Jane Doe as Defendants in this action. The Plaintiff notified the Court at the hearing on July 6, 2010 that he had discovered the identities of John and Jane

Motions to Dismiss (Dkt. No.'s 14 & 15). The Court heard oral argument on the matter on July 6, 2010.

After considering the arguments presented by both parties, it is clear to the Court that all of the Defendants are entitled to Eleventh Amendment immunity with respect to the Plaintiff's claims against them in their official capacity. See Edelman v. Jordan, 415 U.S. 651 (1974). Consequently, it is hereby,

ORDERED

that the official capacity claims against all the named defendants are **DISMISSED**.² Because the dismissal of all the official capacity claims results in the dismissal of the only claim against the City of Roanoke Sheriff's Office, and results in the City of Roanoke Sheriff's Office no longer being a party to the action, the case shall hereafter be styled *Vandegrift v. Johnson, et al.*

It is equally clear to the Court that the Plaintiff's demand for injunctive relief is unavailing because he has not alleged that he, individually, faces a threat of present or future harm. See City of Los Angeles v. Lyons, 461 U.S. 95 (1983). Consequently, it is hereby,

ORDERED

that Plaintiff's claim seeking injunctive relief is **DISMISSED**.

All of Plaintiff's remaining claims are sufficiently pled to proceed. Accordingly, it is hereby,

ORDERED

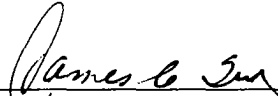
that the Defendants' Motions to Dismiss are **DENIED in part** and **GRANTED in part**.

Doe. The Plaintiff sought leave to amend his complaint on July 9, 2010 and the Court granted his motion on July 13, 2010. The Amended Complaint names Kenneth Ferrell and Jewell Payne as Defendants in this action, but as of yet, neither party has answered the complaint and no attorney has made an appearance on their behalf.

² Although Defendants Ferrell and Payne have not yet answered or responded to the complaint, the Court will *sua sponte* dismiss the official capacity claims against these Defendants as well.

The Clerk of Court is directed to send a copy of this Order to counsel of record for the respective parties.

ENTER: This 15th day of July, 2010



Hon. James C. Turk
Senior United States District Judge